

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT BREHM,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	No. 08-1760
	:	
U.S. DEPARTMENT OF JUSTICE	:	
OFFICE OF INFORMATION AND	:	
PRIVACY,	:	
Defendant.	:	

EXPLANATION AND ORDER

I. Introduction

Robert Brehm (“Brehm”) brings this action against the United States Department of Justice, Office of Information and Privacy (“DOJ”), seeking the release of records pertinent to his conviction under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Specifically, Brehm asks for the release of records pertaining to any Assistant United States Attorneys who were involved in prosecuting a criminal case against him in the Southern District of Florida. Brehm alleges that the records will provide evidence that his prosecution and conviction were unconstitutional. The DOJ moves to dismiss this action, or in the alternative, for summary judgment.

II. Background

Brehm is currently incarcerated at FCI Edgefield in South Carolina. On January 3, 2007, Brehm requested that the DOJ provide him with all FBI records referencing him. When asked for additional information regarding the records sought, Brehm provided the names of four Assistant United States Attorneys and one United States Attorney from the Southern District of Florida and asked for records regarding “any advice provided to the Department of Justice

attorneys about how to comply with the applicable rules of professional conduct in the performance of their duties” from October 2007 to April 11, 2007. Government’s Motion to Dismiss, p. 2. On May 22, 2007 the DOJ refused to confirm or deny the existence of such records citing exemptions 6 and 7(C) of FOIA. On September 8, 2007, Brehm appealed the DOJ’s decision, which was affirmed by the appellate branch of the DOJ on January 15, 2008. Brehm filed this action in the Eastern District of Pennsylvania on May 15, 2008.

III. Jurisdiction

Brehm’s complaint states that this action is brought “pursuant to 5 U.S.C.S § 552(a)(4)(B)” and this court has jurisdiction “pursuant to 42 U.S.C.S. §1983, 28 U.S.C.S. 1331, 5 U.S.C.S. § 552(a)(4)(B), 5 U.S.C.S. § 702, 703, 706.” Brehm's complaint is an action for release of records brought under FOIA; 42 U.S.C.A. §1983 and 5 U.S.C.A. §§ 702, 703, and 706 are irrelevant to jurisdiction over this action. This action is improper in the Eastern District of Pennsylvania according to the jurisdictional section of FOIA:

On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

5 U.S.C.A. § 552(a)(4)(B)

The complainant resides in South Carolina and does not allege having a principal place of business in the Eastern District of Pennsylvania. The agency from which Brehm requests records is located in Washington, D.C., according to Brehm's complaint. Brehm does not allege that the agency records are located in the Eastern District of Pennsylvania. Therefore, this court does not have jurisdiction over this action brought pursuant to 5 U.S.C.A. § 552.

Order

AND NOW, this _17th ___ day of December, 2008, it is **ORDERED** that Plaintiff's Complaint is dismissed for lack of jurisdiction.

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

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